



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

OFFICE OF
ENVIRONMENTAL CLEANUP

Mail Stop: ECL-111

MAY 25 2011

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Ms. Elizabeth Parrott Stultz
Regional Manager – Trust Real Estate
BNY Mellon N.A.
1201 Third Avenue, Suite 5010
Seattle, WA 98101

Re: Request to Substantiate Confidentiality Claim

Dear Ms. Stultz:

On September 3, 2009, EPA received your response to an information request issued pursuant to Section 104(e) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9604(e) for the Lower Duwamish Waterway Superfund Site in Seattle, Washington. In this response BNY Mellon N.A., Trust for Giuseppe and Assunta Desimone, asserted a claim of business confidentiality for information submitted which included the following:

- Lease to Duwamish Marina and Industrial Park (Exhibit 2, Tab 1, Bates: DFT000023-59)
- Phase I Environmental Assessment for Duwamish Marina Property (Exhibit 2, Tab 5, Bates: DFT000562-824)
- Letter from Duwamish Marina & Industrial Park to JSH Properties, Inc., with attached Environmental Report (Exhibit 2, Tab 12, Bates: DFT000847-873)
- Memorandum from Hart Crowser to Desimone Trust and JSH Properties, Inc. regarding Environmental Review – Global Intermodal Systems Property (Exhibit 2, Tab 13, Bates: DFT000875-880)
- Lease with Boeing Airplane Company Re: 1228 (Exhibit 3, Tab 2, Bates: DFT000889-907, DFT000908-909)
- Lease with Boeing Airplane Company Re: 1229 (Exhibit 3, Tab 4, Bates: DFT000919-937)
- Lease with The Boeing Company Re: 1230 (Exhibit 3, Tab 6, Bates: DFT000942-957)
- Environmental reports by Landau Associates, Inc. (Exhibit 3, Tab 7, Bates: DFT000959-1153, DFT001154-1261)
- Lease with Boeing Airplane Company and Supplemental Agreement No. 1 to Lease (Exhibit 4, Tab 1, Bates: DFT001266-1286)
- Supplemental Agreement No. 2 to Lease with Boeing Airplane Company (Exhibit 4, Tab 2, Bates: DFT001288-1291)
- Lease with Douglas R. Scheumann, Richard E. Scheumann, Keith C. Howell, and G.A. Welch d/b/a Fremont Associates (Exhibit 5, Tab 1, Bates: DFT001362-1380)
- Lease with Dick's Towing & Road Service, Inc. (Exhibit 5, Tab 7, Bates: DFT001534-1551)
- Lease with Eagle Systems, Inc. (Exhibit 5, Tab 8, Bates: DFT001553-1569)

- Lease with Pacific Northwest Transfer, LLC (Exhibit 5, Tab 9, Bates: DFT001571-1586)
- Lease with Knight Transportation, Inc. (Exhibit 5, Tab 10, Bates: DFT001588-1604)
- Lease with Nuprecon, LP (Exhibit 5, Tab 11, Bates: DFT001606-1624)
- Phase 1 Environmental Assessment for the Fremont Property (Exhibit 5, Tab 12, Bates: DFT001626-1815)
- Ground Lease with the Sabey Corporation (Exhibit 6, Tab 1, Bates: DFT001821-1853)
- Amendment to Ground Lease with the Sabey Corporation, 10/27/1987 (Exhibit 6, Tab 2, Bates: DFT001855-1865)
- Amendment to Ground Lease with the Sabey Corporation, 10/20/1995 (Exhibit 6, Tab 10, Bates: DFT001957-2143)
- U.S. Postal Service Ground Lessor Agreement (Exhibit 6, Tab 11, Bates: DFT002145-2156)
- March 3, 1997 Amendment to Oxbow Ground Leases (Exhibit 6, Tab 16, Bates: DFT002222-2237)
- Addendum No. 1 to March 31, 1997, Amendment to Oxbow Ground Leases (Exhibit 6, Tab 19, Bates: DFT002255-2260)
- ICF Kaiser Engineers, Inc. Hazardous Materials Investigation at the Oxbow Corporate Park (Exhibit 6, Tab 23, Bates: DFT002297-2382)
- Letter from Sabey Corporation for Mellon with attached Phase I Environmental Site Assessment for South 102nd Street and West Marginal Way South (Exhibit 6, Tab 24, Bates: DFT002384-2441)
- Exhibits 7, 9, and 10 in their entirety

EPA is in the process of determining whether this information is entitled to treatment as confidential business information (CBI). Pursuant to 40 C.F.R. 2.204(e), BNY Mellon N.A. may provide comments to EPA to support a determination that the information is CBI. Specifically, EPA invites your comment on the following points:

- the portions of the information which are alleged to be entitled to confidential treatment;
- the period of time for which confidential treatment is desired by the business;
- the measures taken to guard against undesired disclosure of the information to others;
- the extent to which the information has been disclosed to others and the precautions taken in connection therewith;
- pertinent confidentiality determinations, if any, by EPA or other Federal agencies, and a copy of any such determination, or reference to it, if available; and
- whether the disclosure of the information would be likely to result in substantial harmful effects on the business' competitive position, and if so, what those harmful effects would be, why they are substantial, and an explanation of the causal relationship between the disclosure and such harmful effects.

BNY Mellon N.A. may assert a confidentiality claim covering part or all of the information submitted in the comments. All information claimed to be confidential should be contained on separate sheet(s) and should be clearly identified as "trade secret" or "proprietary" or "confidential." Information covered by a confidentiality claim will be entitled to confidential treatment as set forth at 40 C.F.R. § 2.205(c).

Written comments on the preliminary determination must be postmarked or received by EPA within 15 working days of your receipt of this notice. Your comments should be addressed to:

United States Environmental Protection Agency, Region 10
Aaron Lambert, Environmental Protection Specialist
Environmental Cleanup Office, ECL-111
1200 Sixth Ave. Suite 900
Seattle, Washington 98101

EPA will construe your failure to furnish timely comments as a waiver of the confidentiality claim asserted in your first response.

If you wish to discuss your submission of comments or the confidentiality claim, please contact me at (206) 553-5122. For legal questions please contact Alexander Fidis, EPA Office of Regional Counsel, at (206) 553-4710.

Thank you for your cooperation in this matter.

Sincerely,



Aaron Lambert
Environmental Protection Specialist
Site Cleanup Unit #3
Office of Environmental Cleanup

